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15 IN THE UNITED STATES DISTRICT COURT  
16 FOR THE NORTHERN DISTRICT OF CALIFORNIA  
SAN JOSE DIVISION

17 UNITED STATES OF AMERICA, )  
18 )  
Plaintiff, )  
19 )  
v. )  
20 )  
AERVOE INDUSTRIES, INC.; )  
21 D.A. STUART COMPANY; )  
FORD MOTOR COMPANY; )  
22 GENERAL MILLS, INC.; )  
GOLDEN GATE PETROLEUM COMPANY )  
23 K-M INDUSTRIES HOLDING COMPANY, INC.; )  
PENNZOIL-QUAKER STATE COMPANY; )  
24 SALZ LEATHERS, INC.; )  
SUNSWEET GROWERS INC., and )  
25 TEXTRON INC. )  
26 Defendants. )  
27 )

CIVIL ACTION NO.

JUDGE

COMPLAINT

28 The United States of America, by and through the undersigned attorneys, by the authority

1  
2 of the Attorney General of the United States and at the request of and on behalf of the United  
3 States Environmental Protection Agency ("EPA"), alleges the following:

4 STATEMENT OF THE CASE

5 1. This is a civil action brought pursuant to Section 107 of the Comprehensive  
6 Environmental Response, Compensation, and Liability Act, as amended, 42 U.S.C. 9601 et seq.  
7 ("CERCLA"), against Aervoe Industries, Inc., Bay Area/Diablo Petroleum Co., D.A. Stuart  
8 Company, Ford Motor Company, General Mills, Inc., K-M Industries Holding Company, Inc.,  
9 Pennzoil-Quaker State Company, Salz Leathers, Inc., Sunsweet Growers Inc., and Textron Inc.  
10 ("Defendants"). The United States seeks, pursuant to Section 107(a) of CERCLA, 42 U.S.C.  
11 § 9607(a), recovery of unreimbursed costs incurred by it for activities undertaken in response to  
12 the release or threatened release of hazardous substances at the Lorentz Barrel and Drum  
13 Superfund Site in San Jose, Santa Clara County, California (the "Facility" or "Site"). The United  
14 States also seeks a declaratory judgment that Defendants are jointly and severally liable for future  
15 response costs incurred by the United States in connection with the Site.

16 JURISDICTION AND VENUE

17 2. This Court has jurisdiction over the subject matter of this action pursuant to 42  
18 U.S.C. § 9613(b), and 28 U.S.C. §§ 1331 and 1345.

19 3. Venue is proper in this district pursuant to 42 U.S.C. § 9613(b) and 28 U.S.C.  
20 § 1391(b), because the claims arose and the threatened and actual releases of hazardous  
21 substances occurred in this district.

22 DEFENDANTS

23 4. Aervoe Industries, Inc. is a Nevada corporation with its principal place of business  
24 in Nevada.

25 5. D.A. Stuart Company is a Delaware corporation with its principal place of  
26 business in Illinois.

27 6. Ford Motor Company is a Delaware corporation with its principal place of  
28 business in Michigan

7. General Mills, Inc. is a Delaware corporation with its principal place of business in Minnesota.

8. Golden Gate Petroleum Company is a California corporation with its principal place of business in California.

9. K-M Industries Holding Company, Inc. is a California corporation with its principal place of business in California.

10. Pennzoil-Quaker State Company is a Delaware corporation with its principal place of business in Texas.

11. Salz Leathers, Inc. is a Delaware corporation with its principal place of business in California.

12.     Sunsweet Growers Inc. is a California corporation with its principal place of business in California.

13.     Texttron Inc. is a Delaware corporation with its principal place of business in Rhode Island.

14. Each of the Defendants is a "person," as defined by Section 101(21) of CERCLA, 42 U.S.C. § 9601(21).

15. Each Defendant, by contract, agreement or otherwise, arranged for disposal or treatment, or arranged with a transporter for transport for disposal or treatment, of hazardous substances owned or possessed by such Defendant at the Facility within the meaning of Section 107(a)(3) of CERCLA, 42 U.S.C. § 9607(a)(3).

## GENERAL ALLEGATIONS

16. The Lorentz Barrel and Drum Superfund Site consists of approximately 6.72 acres located in San Jose, Santa Clara County, California.

17. The Lorentz Barrel and Drum Superfund Site is a "facility" within the meaning of Section 101(9) of CERCLA, 42 U.S.C. § 9601(9).

18. From approximately 1947 until 1987, the Lorentz Barrel and Drum Company ("Lorentz") engaged in a barrel and drum reconditioning and reclamation operation at the Site.

19. As part of the operations referred to in the preceding paragraph, drums containing

1 varying amounts of residual materials, including materials that contained hazardous substances  
2 as defined by Section 101(14) of CERCLA, 42 U.S.C. § 9601(14), were regularly received at the  
3 Site from over 3,000 private and public parties. Lorentz stored and reconditioned drums that  
4 contained residual aqueous wastes, organic solvents, acids, oxidizers and oils. During storage at  
5 the Site, the residual contents of the drums leaked or spilled onto the ground. Lorentz used a  
6 variety of methods to recondition the drums, including caustic and acid washing, incineration,  
7 blasting with steel shot and steam cleaning. The residues and cleaning materials were allowed to  
8 drain to the storm sewers or routinely dumped into sumps and basins on-site. The drums were  
9 then resealed, repainted and were either returned to the original owner or sold.

10 20. During the drum storage and reconditioning operation referred to in paragraph 9,  
11 large quantities of hazardous substances, as defined by Section 101(14) of CERCLA, 42 U.S.C.  
12 § 9601(14), were allowed to commingle in the environment, including in the soil and  
13 groundwater. There were "releases," as defined by Section 101(22) of CERCLA, 42 U.S.C.  
14 § 9601(22), of hazardous substances at and from the Site.

15 21. In late 1987 and 1988, EPA and the California Department of Toxic Substances  
16 Control ("DTSC") conducted emergency response actions at the Site. During the emergency  
17 response actions, EPA sampled and removed abandoned drums, and drained and disposed of  
18 hazardous liquids from on-site storage tanks. In 1988, EPA and DTSC removed approximately  
19 3,000 cubic yards of soil and sludge from the sump and basin areas of the Site that were highly  
20 contaminated with volatile and semi-volatile organic compounds, pesticides, herbicides,  
21 polychlorinated biphenyls, and other hazardous substances.

22 22. Samples collected during the emergency response actions indicated that hazardous  
23 substances, within the meaning of Section 101(14) of CERCLA, 42 U.S.C. § 9601(14), were  
24 present in the soil and groundwater at the Site.

25 23. On October 4, 1989, the Facility was placed on the National Priorities List, 54  
26 Fed. Reg. 41000, 41015, which is a national list of hazardous waste sites posing the greatest  
27 threat to human health and welfare and the environment. The National Priorities List is  
28 established pursuant to Section 105(a) of CERCLA, 42 U.S.C. § 9605(a).

24. The United States has incurred costs at the Site that have not been reimbursed through prior settlements. In addition, the United States expects to incur future costs at the Site.

### CLAIM FOR RELIEF: RESPONSE COSTS

25. The allegations contained in paragraphs 1-16 are realleged and incorporated by reference herein.

26. Section 107(a) of CERCLA, 42 U.S.C. § 9607(a), provides in pertinent part:

Notwithstanding any other provision or rule of law, and subject only to the defenses set forth in subsection (b) of this section-

\* \* \* \*

(3) any person who by contract, agreement, or otherwise arranged for disposal or treatment, or arranged with a transporter for transport for disposal or treatment, of hazardous substances owned or possessed by such person, by any other party or entity, at any facility. . . owned or operated by another party or entity and containing such hazardous substances . . . from which there is a release, or a threatened release which causes the incurrence of response costs, of a hazardous substance, shall be liable for--

(A) all costs of removal or remedial action incurred by the United States Government . . . not inconsistent with the national contingency plan . . . .

27. Section 101(25) of CERCLA, 42 U.S.C. § 9601(25), provides:

The terms "respond" or "response" means remove, removal, remedy, and remedial action; all such terms (including the terms "removal" and "remedial action") include enforcement activities related thereto.

28. As a result of releases or threatened releases of hazardous substances at the Site, the United States has taken numerous "response" actions within the meaning of Section 101(25) of CERCLA, 42 U.S.C. § 9601(25).

29. The United States has incurred costs in connection with response actions referred to in the preceding paragraph for which it has made a demand upon each of the Defendants. The United States has outstanding past response costs of more than \$13.7 million in connection with the Site and continues to incur costs in connection with the Site.

30. The costs incurred by the United States in connection with the Site are not

1 inconsistent with the National Contingency Plan, which was promulgated under Section  
2 105(a) of CERCLA, 42 U.S.C. § 9605(a), and codified at 40 C.F.R. Part 300 et seq.

3 31. Each Defendant is jointly and severally liable to the United States for all  
4 response costs incurred and to be incurred by the United States in connection with the  
5 Site, including enforcement costs, and for prejudgment interest on such costs, pursuant to  
6 Section 107(a) of CERCLA, 42 U.S.C. § 9607(a).

7 32. Section 113(g)(2) of CERCLA, 42 U.S.C. § 9613(g)(2), provides in  
8 pertinent part that, in any action for recovery of costs: "the court shall enter a declaratory  
9 judgment on liability for response costs or damages that will be binding on any  
10 subsequent action or actions to recover further response costs or damages."

11 PRAYER FOR RELIEF

12 WHEREFORE, Plaintiff, the United States of America, prays that this Court:

13 1. Enter judgment in favor of the United States and against the Defendants,  
14 jointly and severally, for all costs, including prejudgment interest, incurred by the United  
15 States for response actions in connection with the Site and not otherwise reimbursed;

16 2. Enter a declaratory judgment that the Defendants are jointly and severally  
17 liable for all future response costs not inconsistent with the National Contingency Plan  
18 incurred by the United States in connection with the Site;

19 3. Award the United States its costs of this action; and

20 4. Grant such other and further relief as this Court deems to be just and  
21 proper.

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23 Respectfully submitted,

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25 THOMAS L. SANSONETTI  
26 Assistant Attorney General  
27 Environment and Natural Resources Division  
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